

## AN ACT

ENTITLED, An Act to revise certain provisions and procedures concerning elections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 6-8B-4 be amended to read as follows:

6-8B-4. The governing body shall publish notice of the election once each week for two consecutive weeks in all official newspapers designated by the public body or if there is no official newspaper, a newspaper of general circulation serving the public body. The second notice shall be published not less than four nor more than ten days before the election.

The notice shall state the maximum amount of bonds to be issued, the purpose for which bonds are to be issued, and other matters the governing body determines to be necessary.

Section 2. That § 9-10-6 be amended to read as follows:

9-10-6. Within sixty days after an election directing the employment of a manager in any commission-governed municipality, a special election shall be called and held to elect the nine commissioners. A plurality vote in the election of commissioners is sufficient to elect the commissioners.

The commissioners shall qualify as provided by law and organize by electing a commissioner to act as mayor until the first regular meeting of the board in the month following the first annual election of commissioners. At the first regular meeting in the month following the annual election, the commissioners shall elect a commissioner to act as mayor for a term of one year.

The board has the same powers conferred upon the board of commissioners in a commission-governed municipality pursuant to chapter 9-9. Except as otherwise provided in this chapter, the board shall be governed by the provisions of the law relating to a commission-governed municipality.

Section 3. That § 9-11-8 be amended to read as follows:

9-11-8. The question of changing the form of government may not be voted upon again within one year after the election held pursuant to § 9-11-6.

Section 4. That § 9-13-21 be amended to read as follows:

9-13-21. The finance officer shall prepare and furnish, at the expense of the municipality, all official ballots. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. The ballots shall be white in color, of good quality of print paper, printed in black ink, and in the English language only.

The ballots for municipal elections shall be available for absentee voting no later than fifteen days prior to election day. If the ballots are for a secondary election, the ballots shall be available no later than seven days prior to the secondary election day.

The names of the candidates for each office to be voted for in the precinct shall be arranged without any other designation than that of the office for which they are candidates. If more than one member of the governing body is to be elected, the ballot shall contain instructions as to how many candidates for the governing body are to be voted for. The finance officer shall determine, by lot, each candidate's position on the ballot. Each candidate may be present or represented when the position on the ballot is being determined.

No candidate's name may be printed upon the official ballot unless the candidate has been nominated as provided in this chapter.

Section 5. That § 9-13-28 be amended to read as follows:

9-13-28. The finance officer, within two days after the result of the election is declared, shall notify each person elected to office of the person's election. If a person does not qualify within ten days after the first meeting of the month next succeeding the election, the office shall become vacant.

Section 6. That chapter 12-1 be amended by adding thereto a NEW SECTION to read as follows:

If any state court finds that a declaration of candidacy on a nominating petition is not valid, the

candidacy shall be invalidated as of the date of filing. If the invalidation creates a vacancy which continues to exist after a primary election, the vacancy may be filled as provided in §§ 12-6-56 and 12-6-57.

Section 7. That § 12-1-7.1 be repealed.

Section 8. That § 12-6-51.1 be amended to read as follows:

12-6-51.1. If no candidate for United States Senate, United States House of Representatives, or Governor in a race involving three or more candidates receives thirty-five percent of the votes of the candidate's party, a secondary election shall be held three weeks from the date of the first primary election. At the secondary election the only persons voted for shall be the two candidates receiving the highest number of votes at the first election. However, if there is a tie for second place in the first primary election and there is no tie for first place, all tying second place candidates shall be placed along with the first place candidate on the ballot for the secondary election. The secondary election shall be held at the same polling places, be conducted, returned, and canvassed and the results declared in the same manner as the first election. The person receiving the highest number of votes at the secondary election is nominated as the candidate for the party.

Section 9. That § 12-6-51.3 be amended to read as follows:

12-6-51.3. Within twenty-four hours after the completion of the canvass, the secretary of state shall certify runoff candidates, listed in the order determined by a drawing of names, to all county auditors.

Section 10. That § 12-6-51.4 be repealed.

Section 11. That § 12-14-12 be repealed.

Section 12. That § 12-17B-1 be amended to read as follows:

12-17B-1. Terms used in this chapter mean:

(1) "Automatic tabulating equipment," the apparatus necessary to automatically examine and

count votes as designated on ballots or entered directly into a computer by means of a touch screen or other data entry device and data processing machines which can be used for counting these votes and tabulating results;

- (2) "Ballot," paper ballots containing the names of candidates and statements of measures to be voted on;
- (3) "Counting location," any location selected by the person in charge of the election for the counting of votes cast in an election. A counting location shall be within the territorial jurisdiction of such person unless there is no suitable tabulating equipment available within the jurisdiction. However, in any event, all counting locations shall be within this state;
- (4) "Direct recording electronic," a voting system which records votes by means of a ballot display provided by electro-optical devices that can be actuated by the voter, that process the data by means of a computer program, and that records voting data in internal memory devices;
- (5) "Electronic ballot marking system," any electronic device which marks votes on a ballot;
- (6) "Optical scan," a procedure in which votes are tabulated by means of examining marks made in voting response locations on the ballots with an optical mark reader (OMR);
- (7) "Resolution board," a board at an automatic tabulating location comprised of a representative from each political party having a candidate on the ballot and whose candidate on the county-wide ballot at the last general election received at least fifteen percent of the votes. The county auditor may request additional board members balanced evenly by party. If the resolution board consists of more than one member from each party, the party shall designate which member of the party shall serve as co-leader of the resolution board. The co-leaders shall ensure that each board member is conducting

resolution board duties uniformly and in accordance with applicable statutes and administrative rules. The board shall determine the disposition of those ballots which cannot be properly counted by the tabulating equipment and observe the activities at the counting location on behalf of the board member's respective party affiliation. In strictly nonpartisan elections, the resolution board shall be comprised of two persons who are not employees of the jurisdiction conducting the election and shall be appointed by the person in charge of the election.

Section 13. That § 12-17B-13.1 be amended to read as follows:

12-17B-13.1. If automatic tabulating equipment is located at a polling place for processing ballots while the polls are open, the equipment may not be operated in a manner which returns an over-voted or partially under-voted ballot to the voter. The equipment shall be operated in a manner which returns any ballot that appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot is returned to the voter, the voter may choose to remark the ballot, obtain a new ballot, or resubmit the ballot.

Any central count automatic tabulating equipment shall contain the capability to out-stack ballots and shall be operated in a manner to out-stack any ballot which appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot contains any such mark, the resolution board shall examine the mark and make a determination of any individual vote according to the rules promulgated pursuant to chapter 1-26 by the state board of elections. The resolution board shall make a duplicate ballot as prescribed in § 12-17B-14 which shall be counted by the automatic tabulating equipment.

Section 14. That § 12-18-3 be amended to read as follows:

12-18-3. Except for sample ballots and materials and supplies necessary for the conduct of the election, no person may, in any polling place or within or on any building in which a polling place

is located or within one hundred feet from any entrance leading into a polling place, maintain an office or public address system, or use any communication or photographic device in a manner which repeatedly distracts, interrupts, or intimidates any voter or election worker, or display campaign posters, signs, or other campaign materials or by any like means solicit any votes for or against any person or political party or position on a question submitted. No person may engage in any practice which interferes with the voter's free access to the polls or disrupts the administration of the polling place, or conduct, on the day of an election, any exit poll or public opinion poll with voters within one hundred feet of a polling place. A violation of this section is a Class 2 misdemeanor.

Section 15. That § 12-18-9.1 be amended to read as follows:

12-18-9.1. The superintendent of elections may order poll watchers and voters waiting to vote to position themselves where the poll watchers and voters cannot see into voting booths, read identifying numbers on photo identification cards, or interfere with voters in the act of voting or with the official actions of the election board. A violation of such an order is a Class 2 misdemeanor.

Section 16. That § 12-18-12 be amended to read as follows:

12-18-12. Before delivering a ballot to any voter the member of the precinct election board in charge of the ballots shall stamp on the ballot the official stamp provided for that purpose as follows:

- (1) On a hand-counted ballot, on the back and near the top of the ballot; and
- (2) On an optical scan ballot, the location indicated by the person in charge of the election.

Section 17. That § 12-21-2 be amended to read as follows:

12-21-2. The county recount board of each county which conducts a recount authorized by this chapter shall consist of a recount referee and two voters of the county to be appointed by the presiding judge of the circuit court for that county, and shall provide for representation of the two political parties with the largest party registration in that county. The recount referee shall be a duly qualified member of the bar of the State of South Dakota and a member of the political party which

polled the largest number of votes for Governor in the county in the last gubernatorial election. Prior to serving, each member of the recount board shall take an oath that the member will act in good faith and with impartiality. The state board of elections shall prescribe the oath to be taken.

Section 18. That § 12-21-32 be amended to read as follows:

12-21-32. Upon the conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate shall be signed by at least two members of the board, attested under seal by the county auditor. The certificate shall set forth in substance the proceedings of the board and appearances of any candidates or representatives, shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as to the office, nomination, position, or question as determined by the board through the recount. The certificate shall be made in duplicate, and either the original or duplicate original shall be transmitted to the secretary of state by mail in any recount affecting a certificate to be issued by the secretary of state.

Section 19. That § 13-7-13 be amended to read as follows:

13-7-13. The business manager of the school district shall provide proper ballots, pollbooks, voting booths, and necessary supplies as required by law to the proper election officials on election day. The ballots shall be similar in form to those authorized by law for municipal elections. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. No party affiliation may appear on the ballot and the names of the candidates for the respective vacancies shall be printed on the ballot. Each candidate's position on the ballot shall be chosen by lot by the business manager and each candidate may be present or represented when the position on the ballot is being determined. The ballots for school elections shall be available for absentee voting no later than fifteen days prior to election day.

An Act to revise certain provisions and procedures concerning elections.

\_\_\_\_\_  
I certify that the attached Act  
originated in the

HOUSE as Bill No. 1026

\_\_\_\_\_  
Chief Clerk  
\_\_\_\_\_

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1026

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
\_\_\_\_\_

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

\_\_\_\_\_  
STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State